

U. S. ATTORNEY'S

PRESS CONFERENCE

09/28/2017

TRANSCRIBED BY: Nancy Pannell, CCR

TRANSCRIBED DATE: 09/28/2017

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APPENDIX A

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WOMAN: I'm going to introduce everybody and turn it over to U. S. Attorney Jay Town who is right here, our new U. S. Attorney.

And from the IRS criminal investigation Lisa Fontanette who is an acting special -- assistant special agent in charge, and Angel Castillo from the FBI, also an acting assistant special agent in charge.

So with that, I'm going to turn it over to U. S. Attorney Town. Thank you.

MR. TOWN: Okay. Appreciate the media leaving me plenty of podium space here for my, for my announcement today.

I would like to thank the IRS and the FBI for all their hard work in this case. We didn't leave our fight in the dressing room, and we were very deliberate in our investigation the

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evidence that we have acquired over the last months and years.

It's important to note that, you know, this process -- the pace of this process is not always agreeable to everyone, but we have to be deliberate and get it right.

And it was important that we did so in this case, and I believe that we have, so special thanks to ASAC Fontanette and Castillo to my left and right.

Today the United States announces a six count indictment against David Roberson of Drummond Company, and Joel Gilbert and Steven McKinney of the Balch & Bingham Law Firm.

Count One is conspiracy to commit bribery with a public official. Count Two is the bribery.

Count Three, Four, and Five are honest services wire fraud, which is using electric or electronic communications and payments to devise and

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provide consideration for this illegal scheme.

Count Six is the money laundering conspiracy which is the scheme by which all four of the defendants figured out a way to get the money to Oliver Robinson.

I believe you've all been provided a copy of the true bill. If you have not, let us know at the end of the press conference and Peggy Sanford will make sure that you get a copy of it.

I want to give you an overview of the essential facts, and then the three of us will be available for a short period of time for questions.

Here's an overview of the essential facts. Drummond hires Balch to respond to EPA actions in north Birmingham, specifically to their actions regarding the 35th Avenue Superfund Site which found elevated levels of arsenic, lead, and benzopyrenes in the soil

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samples. These are chemicals that are commonly associated with coal.

McKinney and Gilbert are hired by Roberson and Drummond to craft the response to the EPA.

As you all know, at this time Oliver Robinson has pleaded guilty, and at the time of all of this he was an elected official, a member of the Alabama State House.

He was also the vice chairman of the Jefferson County legislative delegation.

The three defendants announced today worked in concert to conspire with Robinson to carry their interests forward in his official capacity to counter the EPA's actions and protect their potential financial exposure for the cleanup of the Superfund site. The site cleanup could expose Drummond to tens of millions of dollars in remediation.

In September of 2013 the EPA

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notified Drummond of their potential exposure.

In July of 2014, almost a year later, the EPA considered a petition from the Group Against Smog and Pollution, or GASP as it's known, to extend the Superfund site to two additional neighborhoods in north Birmingham, Inglenook and Tarrant.

In October of the same year EPA granted that petition and it began its contacts with the state of Alabama. What happens is then the state and the federal agencies start to determine what should be done, if anything; and, if so, who pays for it.

They contacted the Alabama Department of Environmental Management, or ADEM as you'll hear it commonly referred to, and that is the agency which is responsible for developing Alabama's environmental policies.

The governor, Governor

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Bentley at the time, put ADEM on point to handle all interests for the state of Alabama as it related to the Superfund site.

In September of 2014, basically an entire year after the EPA got on deck, the EPA considered adding the 35th Street Superfund Site to the National Priorities List, which requires priority attention from the EPA and allows the government to begin cleanup without input or agreement from the polluters.

This action or consideration prompted this conspiracy and these criminal actions because of the financial exposure that Drummond would likely face, especially if the cleanup began without their input or negotiation for liability.

The governor put ADEM again on point to represent the interests of Alabama, and it was in context with ADEM, among others, that also led to this conspiracy and these charges.

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Essentially, if you're on the NPL, you're a priority designated Superfund site, and as a priority designated Superfund site, the state and Federal Government can begin cleanup without negotiating with the polluters, and then they'll just come after the polluters later.

And so the polluters can't lock in a liability amount or a remediation amount. They're just going to have to be essentially sued by the state of Alabama.

It's a little more artful than as I'm explaining it, but the process is basically the state goes and collects or the Federal Government goes and collects from the polluters the amount it cost to remediate the Superfund site as opposed to allowing them to negotiate some sort of settled amount of responsibility. So the exposure is much greater once you are on the National Priority List.

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There's really three goals, three essential goals. There's certainly a lot of other goals to this that are sort of in the ether, but the three essential goals to the conspiracy were, first, to prevent the Superfund site from getting on the National Priority List, limit that exposure.

The second was to prevent the Superfund site from expanding into additional neighborhoods.

And the third was to defeat the EPA's actions and the state altogether through official state channels. They needed a guy, and that guy was Oliver Robinson.

They needed someone who is known in the area, understood that constituency from the north Birmingham neighborhoods that were subject to the Superfund site.

And most importantly, they needed someone that was willing to accept

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a bribe, and Oliver Robinson was that man.
Oliver Robinson was that public official.
And Oliver Robinson was that
co-conspirator.

A couple of points about the
contract. You'll hear a lot about a
contract between Balch & Bingham and the
Oliver Robinson Foundation or with Oliver
Robinson. It's all sort of alter ego
stuff.

Couple of points about that
contract. One, the lawyers have to
justify to their accounting department why
all of this money is going out the door
from Balch to the foundation, so they have
to come up with a reason.

The total amount of money
that went out the door from Balch to the
foundation was roughly \$360,000. Also,
the contract is nothing more than a clever
way to craftily create the illusion of a
defense, that all of this was just cleared
by other people as legal, we let other

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folks look at it, and they said that it was fine so I just went ahead with it, and if Oliver Robinson did something wrong, well, we can't control the actions of a third person.

But unfortunately, the defendants indicted today, the co-conspirators, did not share all of the pertinent information with the principals at Drummond and at Balch.

They didn't share the fact that he was going to be -- Oliver Robinson was going to act in his official capacity. They simply let the four corners of the contract sort of speak for itself, which on its face might appear somewhat innocuous, but certainly wouldn't have what was the behind-the-scenes activities of Oliver Robinson in a number of ways-- and I'll list some of them, just some of them in a moment-- acting in his official capacity as a public official.

That was the purpose of the

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contract was an illusion. It was the true purpose of the conspiracy and the true purpose of the \$360,000 that Oliver Robinson collected as a result of that conspiracy.

Those contacted at Drummond and Balch about this consulting contract were in my judgment duped by these co-conspirators and their concealment from them the truth of the true purpose of their dealings with Oliver Robinson.

And frankly, it just further underscores the depth of this bribery scheme, and it is great evidence of that scheme and conspiracy.

It was done all under the guise of a foundation doing outreach, but really what it was was buying a public official.

The contract itself, and you'll see in the indictment, paragraph 54, that the Oliver Robinson Foundation -- now get this, the Oliver

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Robinson Foundation in the contract with Balch, quote, could not, and this is Oliver Robinson is going to be the one who's going to go out and do all of these things.

Oliver Robinson could not directly or indirectly engage or be concerned or interested in any business or activity which conflicts with its services to Balch or the interests of Balch as determined solely by Balch.

Moreover, the contract demands that the existence of the agreement itself be kept confidential by Oliver Robinson.

So said differently, go act in your official capacity as a public official from the area at which the Superfund site exists. If we want your opinion, we'll give it to you. Do what we tell you regarding the Superfund site and we'll pay you to march in the direction you're told, and oh, by the way, keep your

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mouth shut about this whole thing.

That's in the contract itself, and that's why it's in the indictment. That ladies and gentlemen, is the guts of a conspiracy. At this level that's how conspiracies are born.

Some of the official actions taken by Oliver Robinson, just some. It included using his official letterhead as a state legislator to communicate the interests of Balch as was directed by Balch to an official Alabama -- Alabama Department of Environmental Management, to have official conversations in his official capacity with Alabama environmental agencies and their personnel and directors regarding those exclusive never-to-conflict-with interests of Balch and Drummond.

Never once did Oliver Robinson indicate to anyone that he talked to while in his official capacity as a legislator that he had this contract.

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Never once did he ever disclose this conflict of interest. Never once did he inform folks that he was acting on behalf of a law firm and a coal company.

Robinson also made public comments in official meetings representing himself in his official capacity but presenting the exclusive interests of his co-conspirators.

Robinson also put forward a joint resolution that he voted for, went before the House and the Senate, and that joint resolution was to the distinct advantage, ironically I'm sure, to Balch and to Drummond opposing the EPA's actions. Robinson voted for that joint resolution.

For his trouble, for all of this, he received between seven and \$20,000 a month totaling the 360,000. His first payment was 14,000. Presumably, he was getting first and last month's rent up

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front.

He also made comments before the Alabama Environmental Management Commission in his official -- in his official capacity.

And a little bit about the lawyers involved. Both lawyers involved in this case created, reviewed and/or approved all of the documentation that was executed by Oliver Robinson.

Both lawyers approved and otherwise knew the monetary payments to Oliver Robinson. Both lawyers knew the scheme to pass through the money through Balch to the foundation, and then have Balch reimbursed through either the Alliance for Jobs and the Economy or Drummond.

That scheme further underscores the heights of the conspiracy here, especially since Roberson as a lobbyist couldn't pay any of those monies directly to a public official.

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The lawyers reviewed and crafted talking points for Robinson's official appearances. They reviewed or crafted letters for Robinson to address the object of the conspiracy to be put on his official letterhead.

They reviewed and crafted the joint resolution. They constantly consulted with one another in their preparation of Robinson for his public appearances.

Basically, McKinney and Gilbert were the brains behind every public or official action taken by Robinson.

And why wouldn't they be? They helped Drummond buy him, and they were getting what they paid for.

So in conclusion, in so many ways this is the worst type of public corruption. It was all done for the greed of a few and at the expense of so many families and children living in

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potentially toxic areas.

There's nothing new under the sun. This is about money. This is about limiting exposure for a cleanup.

This isn't about the EPA. This isn't about overreach. This is about a refusal to take the legal, lawful, and legitimate processes that everyone has to counter the Federal Government, which I believe that everybody should have a right to do, and I say that as a member of the Federal Government, but you have to go through those legitimate processes.

You have to do it lawfully. You don't get to buy politicians, and, frankly, we should all be about tired of this.

If anyone thinks the EPA or any other governmental agency is overreaching, there are legitimate processes by which everyone is afforded, but buying a politician is not one of those processes and it certainly isn't

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legitimate.

These charges only reflect the unlawful response to a few at the expense of many citizens of Alabama. This was nothing more than bean counting in some environmental paradigm. It's cheaper to pay for a politician than it is to pay for environmental cleanup.

That's just a summary. There's certainly a lot more to this. Before I open it up for questions, I want to say that our trial team has worked very hard along with our federal partners on this case. They've worked long hours.

I've gotten emails at three in the morning or five in the morning from all of them updating me, updating our leadership in our office on this case. We took it very seriously.

We had to be deliberate. We couldn't always get the answers to you as quick as we would like. Some of it is just procedural. Some of it is we needed

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to make sure, but all of it was the right way to proceed.

So now, that we're here, we can answer whatever questions you might have.

THE REPORTER: Mr. Gilbert's lawyer has already responded saying essentially that it was just a lawyer doing business for a client. Can you address that directly?

MR. TOWN: Well, look, it's an adversarial process, and he's going to represent his client zealously. There's -- you know, I've been in this business for 20 years and there's nothing he said that I didn't expect him to say.

So I appreciated his comments, but I disagree. You know, I feel very confident about the charges that we have here today.

THE REPORTER: Can you say when Oliver Robinson began cooperating, from the time that he resigned? And can

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you explain how y'all came to find out
about this --

MR. TOWN: Yeah, I'm not
going to get into like the when. I think
if I understand your question correctly is
when did he start cooperating with the
Federal Government?

Yeah, I'm not going to get
into that. I would just, I would just
simply tell you that he's been a helpful
witness.

THE REPORTER: (Inaudible.)

MR. TOWN: I'm sorry?

THE REPORTER: Any
discussion of plea deals with these three
defendants?

MR. TOWN: No discussion
about plea deals. In fact, you know, if
that's something their lawyers want to
approach us about, but at this time we're
just preparing for trial.

THE REPORTER: Can you say
how y'all came about finding out about

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this corruption?

MR. TOWN: Well, I mean,
hard work of federal agencies. You mean
how did --

THE REPORTER: (Inaudible)
some kind of tip or something?

MR. TOWN: Well, yeah,
you're going to have to wait for all of
that, all right?

So there's -- so there's
some aspects -- in all honesty and
sincerity, there's aspects of every
investigation, even at this point, right,
where we're announcing we have four
defendants essentially. One has already
pleaded guilty.

But there are aspects of it
that, you know, stuff that might be behind
the curtain that we just need to save for
our investigative and prosecutorial
purposes. It's not to be void with you at
all.

I would love to tell you

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everything, but there will be a day
sometime in the future where we can
discuss all of this.

THE REPORTER: Are there any
other indictments anticipated? Is there
anybody else in your cross hairs?

MR. TOWN: Not at this time,
but we're going to continue to review the
evidence as it comes into us. I think
that what the department requires of me
and my office, and I think what everybody
in the northern district requires of my
office is that if we get more evidence, if
we pursue it, then the agencies to my left
and my right are going to track it down,
but as this time these are our four.

THE REPORTER: Are you
confident that Oliver Robinson is the only
public official involved in this
conspiracy?

MR. TOWN: Yes. Go ahead.

THE REPORTER: How did you
reach the determination that the other

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partners at Balch & Bingham and any other executives at Drummond Coal were innocent dupes getting played by these crooks?

MR. TOWN: Well, again, I don't want to comment too much on evidence, right, because I don't want this to turn into a discovery conference, but what I can tell you is the evidence supports the conclusions that the folks who were indicted from Balch did not explain to the powers that be, the folks that they would like to say let them, let them pursue this contract and these monies, they were not given the full picture, and I believe that's remarkably clear in the evidence. Sir.

THE REPORTER: Yes, Mr. Town, this is coming from Jack Sharman's response that the foundation -- did the foundation do legitimate work, or was it primarily all just for all the funds?

MR. TOWN: I would say it

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probably did some legitimate work. It didn't do 360K worth. That's what I would say. Lauren.

THE REPORTER: Do you expect Mr. Robinson to testify should it go to trial against these three defendants?

MR. TOWN: I'd say it's a pretty safe bet, yeah.

THE REPORTER: How soon will it get to trial?

MR. TOWN: I'd be -- I don't think we're going to get to it this year. I think it will be docketed probably this year.

Procedurally they will be giving a notice to appear and they'll be arraigned sometime in the next two weeks. The judge will give us a series of appearance and court dates, and we'll get sort of a calendar together.

Mr. McKinney it's my understanding if he has an attorney, I don't know about him or her, so whoever

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that is is probably going to need more than the rest of this year to get up to speed on what is a remarkable amount of evidence in this investigation.

So I would be surprised if we get to it this year, but we're ready to go right now. Yeah. Kyle Whitmire doesn't have a question? Do you have any letters?

Go ahead. We're going to give Kyle a minute to come up with something. Archibald was right out of the gate.

THE REPORTER: We've seen both state and federal cases a number of situations where public officials have had these consulting contracts at some time.

MR. TOWN: Yeah.

REPORTER: Where is the line?

MR. TOWN: Okay, and that's a fair question, and I would offer you paragraph 54 again because -- in the

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indictment, because I think what you're going to find is the line in the sand is not that I can't hire somebody to consult with me.

If there would have just been this outreach to the north Birmingham area, I don't think we would be here. But what it was is he acted and they conspired for him to act in his official capacity to defeat the EPA at the state level.

It wasn't -- it wasn't a grassroots movement that they bought with their 360K. They bought a politician to go to Montgomery and tell agencies and officials in the statehouse and the state Senate that the EPA is overreaching and we need them out of our state.

And that was to the benefit of Drummond and to the benefit of Balch, so I don't know where the line is, but I know that's on the other side of it.

THE REPORTER: Who inside Balch approved these payments? I mean,

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there's some talk in the indictment about, about these lawyers going to their billing department and having names removed from invoices and that sort of thing.

MR. TOWN: Sure.

THE REPORTER: So it seems to suggest that the names were on the invoices at some point. Did that not raise flags, red flags at Balch --

MR. TOWN: Well, and it may have, and I'm not going to comment on that, but I don't believe that the folks writing checks to the Oliver Robinson Foundation, and this, Kyle, I hope answers your question, I don't believe they knew about the public capacity of this consulting agreement because it was no where in the four corners of it, but that was the activity that was afoot.

So they had to come up with a reason to justify those payments to the foundation, and it couldn't be an illegal one so they came up with a legal one and

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then just did the illegal stuff anyway.

Does that make sense?

WOMAN: I think we've got time for one more question.

MR. TOWN: Go ahead.

THE REPORTER: Okay. Sorry to take the last one. I know I'm barking on something that you guys have basically already addressed, but is there any inkling, any likelihood, any concern that this is somewhat wider spread than what we know right now?

MR. TOWN: Well, look, I mean, here's, here's I guess what I would caution and then I would profer to you is that if more evidence comes up that we believe we can prove beyond a reasonable doubt, we're going to charge those folks.

And when I say to you that it matters not to me your benefactor or station, if you're involved in breaking -- breaking the law or violating the federal law, we're going to charge you if we have

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evidence of it.

So right now our evidence supports the four charges we brought, and I'm very comfortable with those four charges right now. I've got one more if anybody wants to take one more.

THE REPORTER: Why -- where is the line of demarcation with, for instance, you know, Drummond Company actually seems to be benefiting from this scheme, right, that's been alleged?

MR. TOWN: Yes.

REPORTER: Because now they aren't going to have to pay out this money to the EPA or pay for this big issue, this cleanup.

At what -- what's their exposure here, or is it just all on Roberson personally?

MR. TOWN: From my office's point of view it's all on Roberson. I -- at this time there's -- we don't have evidence that would support a conclusion

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that anyone else at Drummond acted in a criminal manner that would expose them to criminal sanctions.

THE REPORTER: But their company benefited from his actions in possibly millions of dollars --

MR. TOWN: Well --

THE REPORTER: -- that they didn't have to pay out in cleanup costs; right?

MR. TOWN: Well, that's -- and that's a fair comment, but the EPA still has their available remedies, so I guess what I can say from my office's point of view, and I'm using that deliberately, Roberson seems to be the only one at this time that's going to be exposed to any sanction from my office's point of view. Last one, Lauren.

THE REPORTER: Along the lines of Kyle's question, was there any consideration going after the entities?

MR. TOWN: Don't ever spring

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one off of Kyle Whitmire. Could you repeat your question?

THE REPORTER: Was there any consideration going after the entities?

MR. TOWN: Well, you know, we're going to consider it all, but our, our best course of action and the course of action that we've chosen is to indict these four co-conspirators so that's it for now for sure. All right? All right, one more. Go ahead. Last one.

THE REPORTER: If they get convicted from all of this, is there the possibility that the Government may bring civil litigation against Drummond or Balch & Bingham as owners?

MR. TOWN: Well, I mean, we're not going to ever count those options out, but at this time we're just going to focus on the criminal charges. All right. Thank you, everybody. I appreciate you coming in.

[Proceedings concluded.]

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C E R T I F I C A T E

STATE OF ALABAMA)

TUSCALOOSA COUNTY)

I hereby certify that the above
transcript was typed by me from a
DVD/AUDIO recording and transcribed true
and correct to the best of my ability.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the results of said cause.

NANCY W. PANNELL, CCR

ACCR#30-EXPIRES 9/30/18

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